IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr.Appeal 44 of 2005

Reserved on : 23 .10.2007

Date of Decision: 2nd Nov.,2007

Karam Singh .....Appellant

Versus

State of H.P. ..... Respondent

Coram:

The Hon'ble Mr. Justice Surjit Singh.J.

The Hon'ble Mr. Justice Surinder Singh,J.

Whether approved for reporting ?[1] *No .*

For the appellant : Mr. Vinay Thakur, Advocate.

For the Respondent : Mr. Som Dutt Vasudeva, Addl. Advocate General with Mr.D. S. Nainta,Dy. Advocate General.

Surinder Singh, J.

The appellant felt aggrieved by the judgment of conviction and sentence passed against him by the learned Sessions Judge, under section 302 of the Indian Penal Code, for allegedly causing murder of Khushi Ram driver, which has been assailed in the instant appeal on law and facts.

In short the admitted facts of the case are that:

a) **M/S Vardhman group of Industries had organized "Auro Fair" at Baddi for two days, in**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ? Yes.***

the month of October, 2002 which ended on 24th day of that month;

b) **The Management of the said concern deputed five vehicles (canters), bearing No.HR-03-8016 of which Sh. Mohan Lal was the driver, HP-12-2015 with its driver Sh.Jai Paul, PB-10J-9710 with driver Sh.Khushi Ram (deceased) and cleaner Amar Nath @ Gogi, HP-12-2115 with Sh. Fauji driver and HR-03-4626 with driver Karam Chand (accused) and cleaner Soni Kumar for loading and transporting the Tent materials from the Auto fair ground back to Pinjore;**

c) **In the evening of 24th October, 2002 driver Khushi Ram (deceased) had brought a pouch of 750 ml. of country liquor around 9 p.m. on 24.10.2002, which was consumed by him in the company of Mohan Lal Complainant. In the meantime, convict- appellant came there along with Avtar Chand on his motor-cycle, later they were joined by one Dalel alias Bhalla;**

d) **Appellant left the place in a maruti van bearing registration No.HP-12A-1186, which was brought by Bhalla aforesaid and returned back with a pint of wine;**

e) **At about 9.45 p.m. Bhalla left their company on the pretext that he had to drop some guest at the Railway Station, Kalka. Thereafter the**

convict-appellant and Avtar Chand also left the place on the motor-cycle;

f) Rest of the drivers and cleaners took their meals in the hotel of Pappi and came back to "Auro Fair" ground where the tents were pitched; in the meanwhile, Avtar Singh along with Karam Chand appellant returned to the *mela* ground.

It is alleged that on reaching there, the appellant started hurling abuses to Khushi Ram deceased and there was a scuffle. However, they were separated by Jai Paul (PW2) Amarnath alias Gogi and Soni (not examined). However, the appellant threatened the deceased to see him later and boarded his vehicle (canter HR-03-4626) which was parked in the ground. He started and brought it in a high speed towards the deceased and dashed him, while he was urinating, as a result of which he fell down, came beneath the said vehicle and was run over. The drivers and cleaners present there raised hue and cry. As soon as they started to lift Khushi Ram, the appellant Karam Chand swerved the vehicle towards them and tried hit them, but they ran for safety and were saved. When the appellant left the place, drivers and cleaners aforesaid lifted Khushi Ram in an unconscious condition, took him to hospital at Baddi in an Indica car of the Company, where he was declared dead. It is alleged that the appellant was envious of the good reputation of the deceased which he was enjoying in the management of the company.

The police was informed telephonically and reached the spot. PW Mohan Lal got recorded his statement Ex.PW-1/A under section 154 of the Code

of Criminal Procedure on 25.10.2003 on the basis of which formal FIR Ex.PW-2/A was registered.

After preparing the inquest report and taking photographs of the vehicle in question, the dead body was sent for autopsy which was performed by Dr. Bhupesh Gupta (PW13). According to him, the deceased had died on account of head injury leading to cardio pulmonary arrest. The injuries found on the dead body were anti-mortem, which could be caused by hitting with a speedy vehicle.

After effecting recoveries from the spot, the appellant was arrested, his blood and urine samples were sent for analysis to the Forensic Science Laboratory but no traces of alcohol was found (Ex.PW23/D). Viscera of the deceased was also sent for analysis. As per report, it contained alcohol (Ex.PW13/B).

Police got conducted mechanical examination of the said vehicle and after recording statement of the witnesses and on receipt of the report of the Chemical Examiner, the case was presented in the court for trial, under section 302 of the Indian Penal Code, against the appellant.

Finding a prima-facie case, the appellant was charge sheeted for the said offence to which he pleaded not guilty and claimed trial.

Statement of the appellant was recorded under section 313 of the Code of Criminal Procedure. The appellant had raised a defence that the deceased was hurling abuses and threatened him. There was a scuffle. As soon as he tried to flee away in his canter, the deceased clung to its door but fell down when the canter moved on. Thus he sustained the fatal injury by a fall.

The appellant was also called upon to enter upon the defence. To substantiate his version, the appellant examined Om Parkash Giri a labourer in his defence.

After going through the evidence on record and hearing the learned counsel for the parties, the learned trial court convicted and sentenced the appellant, for causing the murder of Khushi Ram, to undergo rigorous imprisonment for life and to pay fine of Rs.10,000/-. In default of payment of fine, to further undergo rigorous imprisonment for one year.

Shri Vinay Thakur, learned counsel for the appellant has forcibly argued that evidence of the prosecution is full of contradiction and unworthy of credence. He has ventilated that the cause of death as opined by the Doctor is head injury, which could be caused by a fall. There were no crush injuries. The defence raised by the appellant stands corroborated from the circumstances on record, therefore, the appellant could not have been held guilty for the offence of murder. Alternatively, he has prayed to convert the conviction of the appellant from section 302 to section 304 of the Indian Penal Code on the ground that the alleged incident was the result of a drunken-brawl with no intention to kill.

On the other hand, Shri Som Dutt Vasudeva, learned Additional Advocate General while supporting the impugned judgment of conviction and sentence has urged that the learned trial court has taken a right view from the evidence produced before it, therefore, no interference is required.

We have carefully given our thoughtful consideration to the rival contentions of the parties and have reappraised the evidence on record.

The brief count of which is given as under:

PW-1 is the Mohan Lal Complainant, driver of the Canter No.HR-03-8016. According to him, on 24.10.2002 “Auro Fair” finished around 8.30 p.m., the tent material was required to be transported by them to Pinjore. At about 10.30 p.m. five vehicles including his vehicle (canter) were parked in the area of the factory. Appellant Karam Singh, received a telephonic call on his mobile-phone. After some time one Avtar Singh r/o Joluwal Tehsil Kalka, Dist. Panchkula reached there on his motor-cycle. Avtar Singh and the appellant went towards Baddi on the Motor-cycle, while the other drivers and cleaners went to take their meals in a hotel of Pappi in front of M/S Vardhman factory. After finishing their meals, they came to the place where the vehicles (canters) were parked in the factory premises. At about 10.45 p.m. Avtar Singh and the appellant returned on their motor-cycle and both of them started hurling abusing and started beating Khushi Ram (deceased) but he along with Jai Paul (PW2) Amar Nath, Soni and Fauji intervened and rescued Khushi Ram from their clutches. Appellant threatened Khushi Ram that he would see him. He would go to his village to bring his co-villagers. Thereafter, the deceased went to urinate at a nearby place, then the appellant intentionally hit the deceased with his canter while driving it in a high speed, as a result of which Khushi Ram fell down and was run over in between the tyres of the canter and suffered head injury. Thereafter, he along with Jai Pal, Amar Nath, Soni and Fauji lifted Khushi Ram deceased when the canter had advanced forward leaving the deceased behind lying on the ground in an unconscious condition but in the process of lifting Khushi Ram deceased from the ground, the appellant at once turned his canter back and brought the same in a speed and attempted to hit and crush all of them but they ran away towards the

tents to save themselves. In the meanwhile the appellant fled away and left his vehicle at some distance from the factory area.

In the cross-examination he has stated that the entire area was covered with tents and chairs and the vehicles (canters) were parked in front of the tents. He has further stated that Khushi Ram had brought one pouch of country liquor of 750 ml. which was consumed by him, Khushi Ram and one Bhalla and they kept on sitting and drinking till 10.30 p.m. when Bhalla had left the place, there was no quarrel between any of them. He has further stated that he did not know what was the cause of quarrel between the appellant and the deceased but there was exchange of abuses and fist blows between the appellant and the deceased. He has denied the suggestion that the appellant was going to his vehicle and the deceased tried to drag out the appellant from the canter and in that process, hands of the deceased slipped off from the window of the moving canter, on account of which he sustained injury on his head by a fall.

To lend strength to the prosecution case, Jai Pal (PW2) was examined to corroborate the version given by Mohan Lal (PW1). He has stated that the appellant had intentionally hit the deceased with his vehicle. Said witness was also subjected to lengthy cross-examination. He has admitted the presence of 5-6 labourers at that time. The appellant and deceased were stated to have good relations with each other. He denied any quarrel on the spot, but later admitted that there was exchange of abuses resulting into scuffle between them. He denied the defence version put to him. He has stated that the appellant had hit the deceased only once by his vehicle.

Jagdish Chand (PW3) Security Inspector of the Factory has stated that the injured was removed to Bhardwaj Hospital, Baddi, immediately in the Indica Car.

I.L.Kherr, Manager Security of the Factory (PW4) has stated that when he came to know about the alleged incident, he telephonically informed Police Post Baddi. The police reached the spot and took photographs.

Sanjay Rana (PW5) is a witness of the recovery memo Ex.PW5/A of the canter.

Jeet Singh, Mechanic HRTC Depot, Nalagarh (PW10) had mechanically examined the vehicle in question and prepared the report Ex.PW10/A.

After the arrest of the appellant-accused, he was medically examined by Dr. C. L. Bhardwaj (PW11) on 25.10.2002 at 2.30 p.m. who noticed Icm x 1cm epidermis deep abrasion right little finger radial aspect terminal phalanx with serius discharge and small laniary abrasion over the left cheek in front of ear pinna with clotted blood. The Doctor issued the Medico-legal certificate Ex.PW-11/A and sent the samples of blood and urine for chemical examination. The Doctor admitted the suggestion that the aforesaid injuries could be caused in a scuffle.

Dr. Bhupesh Gupta (PW13) had conducted the post-mortem on the dead body of the deceased. He found the following injuries on the person of the deceased:

1. Bruise 3x2 cm over the right side temple region;
2. Bruise 3 x 4 cm over the left arm.

3. Bruise 4 x 4 cm over the left side back

4. Bruise 4 x 2 cm over the left hip.

On further exploring the injuries, he found that the right frontal bone was fractured with extra-dural-hematoma approximately 150 cc underneath the frontal bone. In his opinion, the deceased had die due to head injury leading to cardiopul arrest and the probable time elapsed between injury and death was immediate. He has proved the post mortem report Ex.PW-13/A. He admitted in his cross-examination that if a fast moving heavy vehicle crosses over the body of a person and in case a pointing object touches the body it will produce lacerated and incised wound on the corresponding part of the person but there was no such injury. Further according to him, injury No.1 could be produced if the vehicle is slow or suddenly stops on the corresponding point of the body this injury could be caused. He did not overrule the possibility of causing such an injury by a fall.

To substantiate his version, the appellant has examined one Om Parkash, a labourer (DW1) who was allegedly present on the spot at the relevant time. He has stated that there were exchange of hot words and scuffle between the appellant and deceased. One of them proclaimed that he would go to his village and bring the co-villagers. The appellant boarded his canter and put it in motion but the deceased was trying to drag him and his hands slipped off and fell down. In cross-examination he stated that the drivers and cleaners of the other canters were at a distance from them and they were taking eatable. The exchange of words started around 10 p.m. This fact was narrated to the police about the incident but his statement was not recorded.

In view of the above admitted facts the scuffle inter-se the appellant and the deceased stands proved. It is also proved that the appellant had caused the fatal injury on the head of the deceased but as already discussed above, there is no evidence of any enmity or nurturing any motive of committing the murder of the deceased by the appellant. On churning the evidence of the prosecution, we find that the deceased was not crushed under the tyres, as according to Doctor (PW13) in such a situation there would have been lacerated wounds which were not found on the dead body. The hot exchange of words resulted into scuffle (grappling). There was no motive to kill. There was a sudden fight in a heat of passion and in inebriant condition, hit the deceased by the canter causing injury on his head was not under any plan. There is no element of taking undue advantage by the appellant nor there were repeated attempts to crush/hit the deceased. Therefore, the appellant could not have been convicted of the offence of murder punishable under section 302 of the Indian Penal Code.

Thus having considered the material on record and in view of law laid down by the Apex Court in 1987 S.C. 1151 *Gurdeep versus State of Punjab* and 1993 SCC (Cri) 725 *Didar Singh versus State of Haryana,* we are of the opinion that the appellant could only be found guilty of an offence punishable under section 304 Part I of the Indian Penal Code.

Therefore, we allow this appeal to that extent and set aside the judgment and conviction imposed by the trial court on the appellant under section 302 of the Indian Penal Code and alter the same under section 304 Part I of the Indian Penal Code and award a sentence of ten years rigorous imprisonment and maintain the fine of Rs.10,000/- imposed on the appellant by the trial court.

The appellant is allowed the benefit of Section 428 Cr.P.C. The appeal stands allowed to the above extent.

Modified warrants be sent to the jail authorities concerned.

(Surjit Singh),J.

November 2nd, 2007 (Surinder Singh),J.
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